



INTERIOR BOARD OF INDIAN APPEALS

Paiute Tribe of Utah v. Western Regional Director, Bureau of Indian Affairs

39 IBIA 261 (03/23/2004)

Related case:

39 IBIA 263



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET
SUITE 300
ARLINGTON, VA 22203

PAIUTE INDIAN TRIBE OF UTAH,
Appellant

v.

WESTERN REGIONAL DIRECTOR,
BUREAU OF INDIAN AFFAIRS,
Appellee

: Order Dismissing Appeal Without
: Prejudice
:
:
: Docket No. IBIA 04-26-A
:
:
: March 23, 2004

On December 8, 2003, the Board of Indian Appeals (Board) received a notice of appeal from the Paiute Indian Tribe of Utah (Appellant). Appellant filed its appeal under 25 C.F.R. § 2.8, which provides procedures under which a person may make the inaction of a Bureau of Indian Affairs (BIA) official the subject of an appeal to the next official in the appeal process. Appellant seeks review of the failure of the Western Regional Director, BIA (Regional Director), to respond to its October 30, 2003, request for the issuance of a decision on its fee-to-trust application for a 1.72 acre parcel of land in Richfield, Utah, for the Koosharem Band of Paiute Indians (Band).

By orders dated December 9, 2003, and February 11, 2004, the Board requested that the Regional Director provide it with information concerning the status of this matter before him. The Regional Director responded that he would issue a response to Appellant's October 30, 2003, request for action on or before March 15, 2004.

On March 12, 2004, the Board received a copy of the Regional Director's response to Appellant dated March 4, 2004. In his letter to Appellant, the Regional Director outlined the actions and documents he requires – some from Appellant – before he will issue a decision on the proposed acquisition. In a previous status report to the Board, the Regional Director acknowledged the considerable delay in processing Appellant's trust application, but also identified competing priorities within the office's realty workload, and the limited number of staff to perform the work.

In Hackford v. Phoenix Area Director, 30 IBIA 270 (1997), the Board dismissed a section 2.8 appeal when it became apparent that the Regional Director was addressing the

matter on appeal, and that he was awaiting several documents from the appellant in that case. The Board relied on Shaahook Group of Capitan Grande Band of Diegueno Mission Indians v. Director, Office of Tribal Services, 27 IBIA 43, 45 (1994), in which the Board stated:

[T]he information before the Board is that the Director is working on appellant's request, although [the Director's] * * * letter did not precisely meet the requirements of 25 CFR 2.8. Section 2.8 is an action-forcing mechanism. It has been the Board's experience that when BIA is working on a response to a request for action under section 2.8, even though BIA has not technically met all of the requirements of that section, it is more beneficial to the parties to allow BIA to complete its review, and issue a decision. [The Board] sees no reason to believe that this case is different.

Similarly, in this case, the information before the Board indicates that the Regional Director is working to process Appellant's trust application, and may need some additional action or documents from Appellant and advice from the Solicitor's Office. Despite workload and staffing issues, however, the Regional Director should have responded to Appellant's October 30, 2003, letter, as required by 25 C.F.R. § 2.8.

As was the case in Hackford and Shaahook, the Board concludes that it is appropriate to dismiss this section 2.8 appeal without prejudice to allow the Regional Director to continue to address Appellant's request and to work with Appellant in collecting documents and taking the actions necessary to issue a decision. The Board encourages the Regional Director to expedite this matter to the extent possible and appropriate.

Pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, this appeal is dismissed without prejudice. If, following this remand and Appellant's submission of the requested documents to the Regional Director, Appellant believes that the Regional Director is unreasonably delaying issuance of a final decision, Appellant may send another letter to the Regional Director pursuant to section 2.8, and the Regional Director shall respond as required by the regulations. In addition, if Appellant disagrees with the decision it receives from the Regional Director regarding the Band's fee-to-trust application, it may appeal that decision to the Board in accordance with the appeal instructions which the Regional Director will include in his decision.

// original signed
Kathleen R. Supernaw
Acting Administrative Judge

// original signed
Steven K. Linscheid
Chief Administrative Judge